

STAFF REPORT

TO: Planning & Economic Development Committee **DATE:** 2/10/10
FROM: Shannon Tuch, Assistant Planning & Development Director
SUBJECT: Electronic Gaming or Sweepstakes Operations

Summary

Consideration of controls proposed to help regulate the proliferation of electronic gaming establishments and other establishments housing gaming operations.

Background

In 2006, the State of North Carolina adopted legislation that banned video poker and other gaming machines across the state and all machines were phased out by July 1, 2007. Proponents for the video gaming industry responded by adapting machines so that they may fall under a special provision that allowed the NC State Education Lottery and other sweepstakes games made popular by national food chains (McDonald's, Pepsi Co., etc.).

The NC General Assembly responded by amending the law that banned the video poker machines to include "server based electronic games" including sweepstakes games played with pre-paid phone cards or other commodities. Again, the gaming industry responded and modified the machines to fall outside the criteria established by the statute for server based electronic games. Consequently, Guilford County Superior Court Judge John Craig ruled that this new style of play fell outside the reach of the statute and filed an injunction against State of North Carolina law enforcement personnel preventing them from taking criminal action under the new law against those with the reconfigured games. This action appears to have sparked renewed interest and new gaming establishments have been appearing across the state over the last 12 months. In the absence of criminal enforcement measures, numerous municipalities are responding and controlling the proliferation of these businesses through various controls, the most common of which includes the adoption of a Conditional Use or Special Permit process and/or the adoption of a new privilege license fee designed to reflect the profitability of the machines.

At present, the City of Asheville does not define these uses and has no standards in place to help regulate them. Proprietors wishing to establish a new stand-alone electronic gaming operation are stopped at the beginning of their permitting process and informed that the City of Asheville considers these uses to fall under the category of "Electronic Gaming Establishments" as defined by state and, as such, are not a permitted use listed in most commercial districts. Approximately ten (10) separate businesses have established without permits and have been issued Notices of Violation. Most have complied and ceased their activity; however, several sites have chosen to remain open after being cited for failing to comply and are currently accruing a \$100 per day fine that will continue until compliance is achieved or, the use is ceased.

Proposal

After conducting a review of common practices, both locally and across the state, the City of Asheville staff feels that a reasonable response would include two separate actions.

- 1) Amend the City's code of ordinances to create a new business designation and some appropriate controls to help mitigate any potential impacts from the businesses, and
- 2) Adopt a new privilege license fee specific to these uses and consistent with other local municipalities.

After reviewing numerous ordinances from other cities and towns, the most common elements of the newly adopted ordinances include:

- 1) A new, or expanded, or clarified definition
- 2) Limiting the total number of machines
- 3) Limiting the hours of operation
- 4) Requiring a separation from:
 - Residences
 - Other gaming establishments
 - Adult establishments
 - Places of worship
 - Parks, playgrounds, ballfields
 - Daycare centers, daycare homes
 - Schools
 - Libraries
 - Child or family venues (i.e. children's theaters, video arcades, etc.)

A similar review of privilege license fees from other areas has revealed a common practice of assessing a special fee either as a flat fee per establishment or, a sliding fee based on the total number of machines. Both Hendersonville and Weaverville have adopted a \$2600 flat fee per establishment but are considering amending this to be a combination of the two fee structures with a flat fee charged for the first x machines with an additional fee per machine above the base number.

Conversations with other neighboring municipalities indicate that they are considering similar measures. At last contact, Weaverville is also drafting a moratorium for consideration sometime in February and, on February 8th, the Rocky Mount City Council approved a 60 day moratorium to allow time for the city staff to research and draft standards regulating these businesses.

Financial Impact/Resources

At present, City staff has cited 10 separate stand alone establishments and have identified approximately 20 other businesses that include these machines as an ancillary use. To use Hendersonville and Weaverville as a model, a \$2600 flat fee per business would amount to approximately \$78,000 in total revenue paid to the City (assuming all identified businesses wish to remain in operation). Alternative fee structures could result in higher (or lower) revenues.

Some additional city resources would be required to monitor and regulate these uses. The associated costs are difficult to determine but are generally expected to be absorbed through normal permitting and inspection processes.

Goal Alignment

It is difficult to discuss how this proposal aligns with stated goals or plans, predominately because it centers around a use intended to be prohibited but is now proliferating due to a judicial interpretation and, therefore, not considered when goals and plans were discussed and

adopted. Nevertheless, it could be argued that allowing and regulating these uses could result in improved revenues through sales tax and special fees while providing new business and entertainment opportunities. Additionally, regulation (or prohibition) of these uses could help control secondary impacts associated with criminal activity, nuisance complaints and other land use conflicts.

Staff Recommendation

Staff recommends that work continue on the development of a new nuisance ordinance regulating stand alone gaming establishments and, that this ordinance shall include all the elements listed above. Additionally, it is recommended that a new privilege license fee structure be adopted in the amount \$3000 for every business with up to two machines, with an additional fee of \$500 per machine added for each machine above two.

Alternative options for consideration could include:

- Leaving the fee structure as it currently exists or, reducing/increasing the staff recommendation.
- Adopt a new definition for *Electronic Gaming Establishments* and then adding them to the list of permitted uses in appropriate zoning districts.
- Create a new Conditional Use Permit category for *Electronic Gaming Establishments*.
- Expressly prohibiting *Electronic Gaming Establishments* in the City of Asheville.